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R. Richard Banks

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Book Review

The Political Economy of Racial Discourse

Harlon L. Dalton, *Racial Healing: Confronting the Fear Between Blacks and Whites*. New York: Doubleday, 1995. Pp. 246. \$22.50.

R. Richard Banks*

I. INTRODUCTION

Much of contemporary legal scholarship expresses a narrative impulse. Eschewing the traditional norms and forms of legal scholarship, many professors have turned to storytelling to capture issues not

* Reginald F. Lewis Fellow, Harvard Law School. J.D. Harvard Law School 1994; A.M., A.B. Stanford University 1987. For their incisive comments on an earlier version of this review, I thank Brian Bix, Jennifer Eberhardt, Duncan Kennedy, and Daryl Scott. I am also grateful to Randall Kennedy, Joseph Singer, and Kathleen Sullivan for their support and encouragement, which helped to make this and other projects possible. Finally, thanks to Ian Ayres and Jennifer Brown for suggesting that I write this Book Review.

easily elucidated through more conventional approaches.¹ Although the narrative approach has recently come to prominence through the writings of critical feminist² and critical race theory scholars,³ the use of narrative in legal scholarship is not a recent development.⁴

Intellectuals and writers both within and without the academy have recently produced a significant amount of personal writing about race that parallels and sometimes overlaps the legal storytelling movement.⁵ This writing ranges from personal essays,⁶ to memoirs,⁷ to full autobiographies.⁸ Black⁹ law professors, in particular, have

1. Narrative is thought to highlight concerns that would otherwise be ignored in traditional scholarship due to "the bundle of presuppositions, received wisdoms, and shared understandings [that form] a background [against] which legal and political discourse takes place." Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); see also LAW STORIES (Gary Bellow & Martha Minow eds., 1996); LAW'S STORIES (Peter Brooks & Paul Gewirtz eds., 1996) [hereinafter LAW'S STORIES] (containing articles by Martha Minow, Harlon Dalton, Reva Siegal, Catherine MacKinnon, and others); Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989) (containing articles by Patricia Williams, David Luban, Steven L. Winter, Derrick Bell, Richard Delgado, Joseph William Singer, Toni M. Massaro, Mari Matsuda, Kim Lane Scheppele, and Clark D. Cunningham).

2. See, e.g., Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991) (summarizing and critiquing use of narratives in critical feminist legal scholarship).

3. See, e.g., DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987); DERRICK BELL, FACES AT THE BOTTOM OF THE WELL (1992); DERRICK BELL, GOSPEL CHOIRS (1996); RICHARD DELGADO, THE COMING RACE WAR? (1996); RICHARD DELGADO, THE RODRIGO CHRONICLES (1995); PATRICIA WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS (1991); Charles Lawrence, *The Word and the River: Pedagogy as Scholarship as Struggle*, 65 S. CAL. L. REV. 2231 (1992). For criticism of the use of narrative by critical race scholars, see Daniel A. Farber & Suzanna Sherry, *Telling Stories out of Law School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993); Mark Tushnet, *The Degradation of Constitutional Discourse*, 81 GEO. L.J. 251 (1992).

4. See, e.g., LAW'S STORIES, *supra* note 1 (discussing role of narrative in legal analysis and judicial reasoning); Robert Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983) (explaining ways in which normative meaning is created through narrative, legal or otherwise); Lon Fuller, *The Case of the Speluncean Explorers*, 62 HARV. L. REV. 616 (1949) (presenting fictional judicial opinions of fictional court about fictional case as means of demonstrating extent to which contradictory judicial decisions can be derived from same set of facts).

5. For example, many of those who have recently published personal books about race are law professors. See, e.g., STEPHEN L. CARTER, REFLECTIONS OF AN AFFIRMATIVE ACTION BABY (1991); JUDY SCALES-TRENT, NOTES OF A WHITE BLACK WOMAN (1995); GREGORY H. WILLIAMS, LIFE ON THE COLOR LINE (1995); WILLIAMS, *supra* note 3; PATRICIA WILLIAMS, THE ROOSTER'S EGG (1996).

6. See, e.g., CARTER, *supra* note 5; LAWRENCE OTIS GRAHAM, MEMBER OF THE CLUB (1995).

7. See, e.g., LORENE CARY, BLACK ICE (1991); HENRY LOUIS GATES, COLORED PEOPLE: A MEMOIR (1994); JILL NELSON, VOLUNTEER SLAVERY (1993).

8. See, e.g., PATRICE GAINES, LAUGHING IN THE DARK (1994); JEROLD LADD, OUT OF THE MADNESS (1994); MARCUS MABRY, WHITE BUCKS AND BLACK-EYED PEAS (1995); NATHAN MCCALL, MAKES ME WANNA HOLLER (1992); SCOTT MINERBROOK, DIVIDED TO THE VEIN (1995); ITABARI NJERI, EVERY GOODBYE AIN'T GONE (1992).

recently published personal writings about race intended for a broader audience than that of traditional legal scholarship.¹⁰

Racial Healing: Confronting the Fear Between Blacks and Whites reflects both recent legal scholarship's narrative impulse and the turn toward personal writing about race. *Racial Healing* is a personal book about the public issue of race. Professor Dalton blends personal experience and social analysis and switches frequently between first and third person. Rejecting a narrow focus on discrete legal or political controversies, Dalton's wide-ranging discussion illustrates the breadth of issues implicated by what Dalton characterizes as the "deep and abiding wound"¹¹ [of race, which] [i]f left untreated . . . will continue to ooze and fester."¹²

In the first and second parts of the book, Dalton explores the importance of communication to the process of racial healing, highlighting the benefits of as well as the impediments to interracial discussion. Dalton believes that in American society race, paradoxically, both prevents dialogue and makes it necessary.

In the third and fourth sections of the book, Dalton offers advice to whites and blacks, respectively, on how to promote racial healing. Dalton advises whites to acknowledge the privilege that comes from being white, to take shared ownership of the race problem, not to promote dissension among or within minority communities, and to reject the image of rugged individualism enshrined in the Horatio Alger myth. Dalton believes that the Horatio Alger myth, by denying the extent to which race shapes individual opportunity,¹³ "serves to maintain the racial pecking order . . . mentally bypassing the role of race in American society . . . [and] fostering beliefs that themselves serve to trivialize, if not erase, the social meaning of race."¹⁴ To enact Dalton's suggestions, whites must "conceive of themselves as members of a race and . . . recognize the advantages that attach to simply having white skin."¹⁵

Dalton urges blacks to pull together as an inclusive community, to re-evaluate black culture in order to determine which aspects of it

9. Throughout this Book Review, I use the terms blacks, black Americans, and African Americans interchangeably. In my view, the term employed to designate those Americans with African ancestry is immaterial compared to the way in which the group is regarded.

10. See, e.g., SCALES-TRENT, *supra* note 5; WILLIAMS, *supra* note 3.

11. He borrows the wound metaphor from WENDELL BERRY, *THE HIDDEN WOUND* (1970).

12. HARLON L. DALTON, *RACIAL HEALING: CONFRONTING THE FEAR BETWEEN BLACKS AND WHITES* 3 (1995). Dalton returns repeatedly to the image of racial problems as a wound. "The central message of this book is that, if left untended, America's hidden wound will continue to cause us no end of sorrow." *Id.* at 96.

13. See *id.* at 128-30.

14. *Id.* at 132.

15. *Id.* at 6.

should be preserved and which not, to reject the view that black Americans “deserve more from society than do other people of color,”¹⁶ and to retell their story of racial oppression “to describe more precisely how slavery lives on in our lives; not as broken bones or clanking chains, but as a largely unconscious way of framing how we are seen, how we see ourselves, and how we relate to the world around us.”¹⁷

In the final section of the book, Dalton explores his vision of the “racial Promised Land”¹⁸ he believes America will reach if it makes “a genuine commitment to the process of racial healing.”¹⁹ Racial healing in American society would help to create “a future in which there are no permanent winners and permanent losers, in which race and social position have no correlation and in which true equality is the norm rather than the exception.”²⁰ Dalton does not want to abolish race,²¹ but rather to “uncouple race and power”²² while maintaining racial group identity and its cultural products.²³ “The fact that people come in different colors is not a problem, nor are racial differences necessarily a bad thing,”²⁴ Dalton concludes. “What needs changing is the negative value our society places on racial difference, and its use of race as a basis for maintaining a social hierarchy.”²⁵ Dalton opposes the homogenizing effect of racial assimilation and urges that in the process of changing the meaning of race “we need to allow some room for . . . group characteristics and preferences to form.”²⁶

Racial Healing raises many issues in many different contexts. In this Book Review I will amplify and expand upon Dalton’s analysis of the processes that shape debate about race in a manner that calls into question the extent to which interracial dialogue about racial issues can promote racial progress. Dalton identifies lack of communication across racial lines as an important impediment to enhanced racial understanding, improved race relations, and greater racial equality.

16. *Id.* at 206.

17. *Id.* at 157.

18. *Id.* at 213.

19. *Id.* at 234.

20. *Id.* at 101.

21. He would not want to live in a place, for example, where race had been completely eliminated. *See id.* at 217-18.

22. *Id.* at 222.

23. One of the reasons Dalton would prefer to maintain race is the “cultural heterogeneity” which he believes is tied to race. *Id.* at 218.

24. *Id.* at 220.

25. *Id.*

26. *Id.* at 221.

“We are loath to confront one another around race,”²⁷ Dalton begins the introduction. “We are afraid of tapping into pent-up anger, frustration, resentment, and pain. Even when we are not aware of harboring such feelings ourselves, we recognize that they exist in others. Our natural tendency is to hold them in check, in hopes that they will somehow fade away.”²⁸

Dalton knows, of course, that dialogue alone is not sufficient for racial change. He emphasizes that dialogue is enhanced by an understanding of one’s own identity, which leads Dalton to discuss extensively racial consciousness and identity. “[W]hen we try to understand others without first understanding ourselves, when we strive to see through their eyes without first recognizing the limits of our own vision, we inevitably view their differences in a negative light.”²⁹ He writes, “Unless we recognize our own situatedness, we will never get at the truth, or come to realize that it has many faces.”³⁰ In Dalton’s view, dialogue and identity are interrelated. Attitudes and ideas about race are coupled with attitudes and ideas about oneself and one’s own racial group. Changing one’s view of one’s racial self, then, should alter one’s attitude toward race more generally and open the way to improved interracial dialogue.

While Dalton recognizes the impediments to interracial debate about race, he also emphasizes its integral and transformative role in racial healing. “Unlike those who counsel smoothing over our differences and pushing our fears to the side, [Dalton is] convinced that the only way to truly heal the past and prepare for a more just future is to . . . let it all hang out.”³¹ The best way, in Dalton’s view, to “achieve racial healing [is to] confront each other, take risks, make ourselves vulnerable, put pride aside, say all the things we are not supposed to say in mixed company—in short, put on the table all of our fears, trepidations, wishes and hopes.”³²

Dalton’s hopeful view reminds us that change can occur and encourages us all to work toward bringing it about. This book’s greatest contributions to our ongoing national dialogue about race are Dalton’s steadfast faith in the possibility of change and his willingness to map the path toward healing. Rather than highlight reasons why change will not come, Dalton strives to show the way.

27. *Id.* at 3.

28. *Id.*

29. *Id.* at 46.

30. *Id.* at 47.

31. *Id.* at 97.

32. *Id.* at 4.

My purpose in this Book Review, in part as a counterpoint to Dalton's unwavering optimism, is not to explain the potential benefits of dialogue, but rather to investigate its pitfalls and impediments.³³ Whereas Dalton stresses the possibility of dialogic transformation, I highlight the reasons that apparent transformation is as likely illusory as real. Yet, helping to delineate the obstacles to efficacious dialogue embodies faith in its transformative potential as well. Public dialogue can promote change only if its difficulties are successfully and forthrightly confronted.

In Part II of this Book Review, I provide an overview of the role of dialogue in American society and explain Dalton's analysis of the effect of interracial dialogue on racial healing. In Part III, I highlight the reasons that dialogue may fail to promote the remediation of racial inequality, an analysis based in part on the distinction between private, interpersonal dialogue and public debate. In Part IV, I offer a model of interracial dialogue about race. I suggest that public interracial dialogue concerning issues related to race is characterized by the interaction of A) racial group power disparities, B) the legitimating power of blackness, and C) widespread, though often unstated, beliefs about black Americans. These three factors may, in fact, foster debate that reinforces racial inequality while obscuring the process through which it does so.

II. THE CASE FOR DIALOGUE

Dialogue is central to American society, and its primacy is enshrined in the First Amendment. *Why* speech is so important is, of course, a matter of debate.³⁴

Speech may be important because it serves the needs of individuals³⁵ or because it furthers the ends of American democracy.

33. I do not offer any prescriptive analysis regarding the realization of the values that animate free speech principles. Nor do I analyze legal doctrine relevant to the regulation of speech.

34. Various rationales have been proffered to account for the significance of speech and to justify the First Amendment's free speech guarantee. See, e.g., THOMAS I. EMERSON, *TOWARD A GENERAL THEORY OF THE FIRST AMENDMENT* (1966); OWEN FISS, *THE IRONY OF FREE SPEECH* (1996); FREDERICK SCHAUER, *FREE SPEECH: A PHILOSOPHICAL ENQUIRY* (1982); CASS R. SUNSTEIN, *DEMOCRACY AND THE PROBLEM OF FREE SPEECH* (1993); LAURENCE TRIBE, *AMERICAN CONSTITUTIONAL LAW* 785-89 (2d ed. 1988). An interesting response to and recognition of the importance of speech is MARI MATSUDA ET AL., *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* (1993).

35. Speech may be important because it fulfills the needs of individuals that are met through speech and communication, including such needs as dignity, autonomy, and self-realization. For a discussion of societal versus individual justifications, see SCHAUER, *supra* note 34. In this Book Review, insofar as I am concerned with justifications for speech, I am only concerned with those related to societal needs or functions.

Public discourse³⁶ may serve democracy either by leading to truth or by allowing the participation of diverse members of society—participation that is essential to democratic self-governance.³⁷

The metaphor of the “marketplace of ideas”³⁸ best embodies the notion that communication leads to truth. Faith in the marketplace of ideas reflects the belief that “the ultimate good desired is better reached by free trade in ideas [than by suppression of ideas]. The best test of truth is the power of the thought to get itself accepted in the competition of the market.”³⁹ Only through open dialogue, according to this view, can the best ideas come to the fore.⁴⁰

An alternative view is that dialogue is essential to the processes of democracy.⁴¹ The political and social order of democracy can be thought of as “the product of a dialogic communicative exchange open to all.”⁴² Dialogue then does not merely facilitate democracy; it comprises democracy,⁴³ “public discourse [being] the communicative medium through which the democratic ‘self’ is itself constituted.”⁴⁴

Within the legal academy the faith in dialogue is best exemplified by republicanism, a resurgent aspect of constitutional thought and

36. I use the term public discourse to refer to issues of public concern that are debated in a public forum. I use the term public discourse interchangeably with public debate and public dialogue.

37. See FISS, *supra* note 34; Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258, 1276 (1992) [hereinafter Delgado & Stefancic, *Images*] (noting “tenet of liberal jurisprudence that by talk, dialogue, exhortation and so on, we can present each other with passionate, appealing messages that will counter the evil ones of racism and sexism, and thereby advance society to greater levels of fairness and humanity”).

38. *Abrams v. United States*, 250 U.S. 616 (1919) (Holmes, J., dissenting).

39. *Id.* at 630 (Holmes, J., dissenting).

40. See, e.g., SCHAUER, *supra* note 34, at 15-34; Stanley Ingber, *The Marketplace of Ideas: A Legitimizing Myth*, 1984 DUKE L.J. 1.

41. See Robert C. Post, *Racist Speech, Democracy, and the First Amendment*, in SPEAKING OF RACE, SPEAKING OF SEX 123 (1994); see also ALEXANDER MEIKLEJOHN, *POLITICAL FREEDOM* 77 (1965) (arguing that “unabridged freedom of public discussion is the rock on which our government stands”); SCHAUER, *supra* note 34, at 35-46 (discussing justification of free speech guarantee through reference to workings of democracy).

42. Post, *supra* note 41, at 125 (discussing views of Hans Kelsen); see HANS KELSEN, *GENERAL THEORY OF LAW AND STATE* (Anders Wedberg trans., 1961).

43. See, e.g., BENJAMIN BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* 136 (1984) (arguing that “strong democratic legitimacy” depends on “ongoing talk”); JAMES T. FARREL, *DIALOGUE ON JOHN DEWEY* 58 (Corliss Lamont ed., 1959) (quoting Dewey’s observation that “[d]emocracy begins in conversation”); 2 JÜRGEN HABERMAS, *THE THEORY OF COMMUNICATIVE ACTION* 81 (Thomas McCarthy trans., 1987) (describing common will of democratic nation as “communicatively shaped and discursively clarified in the political public sphere”); CLAUDE LEFORT, *DEMOCRACY AND POLITICAL THEORY* 39 (David Macey trans., 1988) (discussing importance of “legitimacy” of debate in democratic state).

44. Post, *supra* note 41, at 127.

social theory.⁴⁵ Republicanism presupposes that people can effectively dialogue based on their sense of the common good⁴⁶ and that through dialogue people can come to understand the views of others.⁴⁷ “Republicanism favors a highly participatory form of politics, involving citizens directly in dialogue and discussion.”⁴⁸ “[R]epublican deliberation . . . [is] an engagement of political equals who, whatever their possible diversity of situation, interest, or normative outlook, are united in their commitment to good faith pursuit of their common good and in their reliance upon each other’s like commitments.”⁴⁹

Some legal scholars doubt the efficacy of republicanism in ameliorating racial inequality.⁵⁰ More generally, many of these scholars question the extent to which “[o]ur much vaunted system of free expression, with its marketplace of ideas, [can] correct serious systemic ills such as racism and sexism.”⁵¹ These skeptics of dialogue argue that the First Amendment’s principle of free expression erroneously “presumes some level of social equality among people and hence essentially equal social access to the means of expression.”⁵² Because “those with the most money can buy the most speech,”⁵³ these skeptical scholars argue, the marketplace of ideas may merely reflect and perhaps legitimate the unequal social and economic status of different groups in American society.

Dalton is not one of the skeptics. For all his recognition of the impediments to dialogue, Dalton maintains great faith in its efficacy. “Engagement is critical to healing,” he writes. “It has the potential to

45. See, e.g., Miriam Galston, *Taking Aristotle Seriously: Republican-Oriented Legal Theory and the Moral Foundation of Deliberative Democracy*, 82 CAL. L. REV. 131 (1995); Frank Michelman, *Law’s Republic*, 97 YALE L.J. 1493 (1988); Frank Michelman, *The Supreme Court, 1985 Term—Foreword: Traces of Self-Government*, 100 HARV. L. REV. 4 (1986) [hereinafter Michelman, *1985 Term*]; Suzanna Sherry, *Responsible Republicanism*, 62 U. CHI. L. REV. 131 (1995); Cass Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. 1539 (1988).

46. In contrast, interest-group pluralism envisions individuals and groups competing in the political and economic marketplace to satisfy their own, perhaps narrowly defined, interests.

47. See Michelman, *1985 Term*, *supra* note 45, at 72; see also Martha Minow, *The Supreme Court, 1986 Term—Foreword: Justice Engendered*, 101 HARV. L. REV. 10 (1987) (explaining importance and efficacy of assuming perspectives other than one’s own in order to further social justice).

48. Michelman, *1985 Term*, *supra* note 45, at 40.

49. *Id.*

50. See, e.g., Derrick Bell & Preeta Bansal, *The Republican Revival and Racial Politics*, 97 YALE L.J. 1609 (1988) (rejecting notion that republicanism would adequately account for and address interests of black Americans); Delgado & Stefanic, *Images*, *supra* note 37, at 1276 (rejecting ability of dialogue to lead to substantive change).

51. Delgado & Stefanic, *supra* note 37, at 1260; see also MATSUDA ET AL., *supra* note 34.

52. CATHERINE MACKINNON, *FEMINISM UNMODIFIED* 129 (1987); see also MATSUDA ET AL., *supra* note 34.

53. MACKINNON, *supra* note 52, at 140.

transform our lives.”⁵⁴ Throughout this Book Review, I refer to the belief that interracial dialogue promotes the remediation of racial inequality as the “dialogue as transformation” approach.

In the first chapter of *Racial Healing*, Dalton recounts an episode in which the mundane and tiresome process of moving his residence provided the setting for an inspirational conversation about race. A decade ago, while in the process of moving from one New Haven neighborhood to another, Dalton “heard someone gently tapping on [his] car window . . . a youngish-looking white woman peering into the car and smiling quizzically.”⁵⁵ A native of Poland who had been in the United States less than a year, she asked why he was moving and then launched into a series of questions about race, the sort of pointed and difficult questions about black poverty and crime that are rarely discussed frankly between blacks and whites.⁵⁶ Initially, Dalton “stared at her hard, and tried to decide whether to wither her with scorn or ice her with contempt.”⁵⁷ Then he looked at her “gentle and inquisitive [face that] radiated intelligence, warmth and genuine curiosity,”⁵⁸ and realized that, as a foreigner, his visitor was ignorant of the etiquette of racial debate and “meant . . . no harm.”⁵⁹ During her time in the United States, the great gulf she had noticed between blacks and whites raised questions to which she now wanted answers. Rather than “skim the surface”⁶⁰ as is common in discussions about race, Dalton and the young woman had an hour and a half conversation that was “frustrating and at the same time so exhilarating.”⁶¹ Her refusal to accept Dalton’s pat answers about race led him to reject them as well, resulting in an exchange that was rare in its candor and thoughtfulness.⁶² Looking back on their first meeting, Dalton describes it as “a one-of-a-kind experience.”⁶³ “We were able to hear one another, to push one another, to be honest with one another, to engage one another.”⁶⁴ Throughout the book, Dalton references this encounter as a model of sincere, forthright interracial discussion of race. Lacking racial baggage of her own, this foreigner pushed Dalton to let go of his. Rather than resort to evasive, self-

54. DALTON, *supra* note 12, at 27.

55. *Id.* at 16.

56. *See id.* at 16-17.

57. *Id.* at 18.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* at 21.

62. *See id.* at 16-21.

63. *Id.* at 21.

64. *Id.* at 23.

serving, rehearsed, or contrived explanations for racial phenomena, they jointly probed issues ranging from the higher incidence of welfare dependence among blacks than whites to whites' preference for white neighborhoods.

Unfortunately, according to Dalton, such dialogue is rare. Dalton describes the ways and reasons that both whites and blacks often avoid racial issues in integrated settings. "White folk avoid talking about race in order to respect the presumed needs of people of color who seem weary of the subject," he writes.⁶⁵ Blacks often avoid race for fear of "being put down, devalued, and not heard."⁶⁶ Blacks also

expend enormous amounts of energy trying to make Whites comfortable around us. We monitor our behavior so as to avoid tapping into subliminal anxieties or fears and steer the conversation to topics that are determinedly safe. We thus achieve a measure of racial invisibility, but at a price—the setting aside of much that is racially distinct about us.⁶⁷

Although Dalton clearly intends his analysis to apply to public as well as private, interpersonal debate, he devotes little attention to that distinction. He thus leaves unclear his beliefs about the links between public and private dialogue. For example, he says that blacks' expression on racial issues is stunted because they "worry that if we own up to the problems that beset our communities . . . our words will somehow be turned against us . . . taken as evidence of our racial inferiority rather than our historic subordination."⁶⁸ He then goes on to urge blacks "to overcome, or at least transcend" such a fear,⁶⁹ reasoning that "the best answer to our fear of being put down, devalued, and not heard is more engagement [because] silence may ensure that our own words will not be turned against us, [but] it can do little to change the mind-sets that, if left unchallenged, will continue to be our undoing."⁷⁰ Dalton's consideration of the psychological toll of bottling one's feelings inside reinforces his belief that blacks "are probably better off erring on the side of speaking our minds, especially in settings where there is little risk of financial or other retribution."⁷¹

At other times he seems to intend his observations to apply to public debate more so than interpersonal communication:

65. *Id.* at 34.

66. *Id.* at 36.

67. *Id.* at 70.

68. *Id.* at 35.

69. *Id.*

70. *Id.* at 36.

71. *Id.* at 37.

When it comes to race, too often the opinions and judgments of people of color are regarded by Whites as subjective and self-interested, and therefore of dubious value. We need look no further than the legal academy to see this dynamic in action. At many schools, people of color new to teaching are advised by concerned White colleagues to avoid dealing with questions of race in their scholarship. 'I just worry that your work won't be taken seriously,' they are told. 'First get tenure. Then you can write whatever you want.' Meanwhile, White junior faculty are given free rein to write about race. If they produce quality work that is supportive of the aspirations of people of color, they are applauded. After all, they didn't *have to* come out that way. They are also applauded if their scholarship is highly critical of positions associated with prominent scholars of color, and are cited for their 'bravery.' The assumption underlying all of this is that people of color have a stake in how the story of race is told, and perhaps even an ax to grind, whereas White scholars are merely disinterested, impartial observers.⁷²

At another point Dalton describes what he terms the "'Disavow That Leader' game,"⁷³ the process in which some blacks are called upon to disavow other blacks as a means of affirming their own legitimacy with whites. He uses the examples of Jesse Jackson and Louis Farrakhan, and of Deval Patrick and Lani Guinier. During the 1984 presidential campaign, "Reverend Jackson was called upon to disavow Minister Farrakhan"⁷⁴ due to remarks Farrakhan had made. Similarly, Deval Patrick, after being nominated to be Assistant Attorney General for Civil Rights, was "repeatedly asked to distance himself from Lani Guinier . . . [who] had previously been asked to distance herself from her own views and convictions."⁷⁵ Dalton believes the same process occurs beyond the political arena as well: "When Blacks appeal to Whites for help, too often they are asked to first affirm that they are not like the Black bogeyman of the moment."⁷⁶ Dalton makes clear that he "would voluntarily take many a Black person to task for spewing invective and spreading a politics of hate . . . but [he will] be damned if [he] will do so in response to White folk who want to see [him] dance on a string."⁷⁷ Dalton concludes that requests by

72. *Id.* at 44. Dalton presumably views the concerned white colleague as not simply providing career advice, but as sharing the same biases that he warns the young black faculty against: that black law professors who write about race are not to be taken seriously.

73. *Id.* at 139.

74. *Id.* at 140.

75. *Id.*

76. *Id.*

77. *Id.* at 140-41.

whites that one black disavow another “smack of an attempt to control what gets said, to control who gets to say it, to divide loyalties, and to ensure that the Black community’s leaders are tractable.”⁷⁸

Dalton’s observations point toward what I believe are fundamental and contestable assumptions that frequently buttress faith in the dialogue as transformation approach. First, the belief that dialogue promotes social change rests on uncertain assumptions about self-knowledge and about the links between dialogue, attitudes, and actions. Second, the potential benefits of interpersonal dialogue may not translate into social change if private and public debate embody different dynamics and are shaped by different forces.

III. THE LIMITS OF DIALOGUE

A. Self-Knowledge and Racial Dialogue (or The Limits of Honesty)

The benefits of honesty turn in part on the extent to which it accurately expresses the complex of beliefs and attitudes that shape people’s opinions and behaviors. Honesty only reflects truth insofar as it rests upon and reflects self-knowledge. The significance of honesty and the transformative possibilities of dialogue are diminished to the extent that “honesty” is the expression of biased, self-interested interpretations of oneself and the world. If people are genuinely unaware of their racial biases and the way in which racial considerations may skew their perception or evaluation of political, social, or economic issues, then frank discussion may be of limited value.⁷⁹ In this sense, honesty will not uncover truth, because people’s true motivations reside beyond the reach of their insight and self-awareness.

Americans may be unaware of the most fundamental ways in which race colors their thinking. Social psychology has generated a voluminous literature that demonstrates that frequently people genuinely do not know when and in what way race has influenced their response to an event, situation, or person.⁸⁰ Controlled

78. *Id.* at 140.

79. For a social-psychological account of how racial biases may influence an individual’s attitudes or behavior without the individual’s awareness, see PREJUDICE, DISCRIMINATION, AND RACISM (John F. Dovidio & Samuel L. Gaertner eds., 1986). For a legal treatment of latent racial bias, see Charles Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

80. See Samuel L. Gaertner & John F. Dovidio, *The Aversive Form of Racism*, in PREJUDICE, DISCRIMINATION, AND RACISM, *supra* note 79, at 35-60 [hereinafter Gaertner & Dovidio, *Aversive Form*]. The best legal treatment of the unconscious role of race is Lawrence, *supra* note 79, at 317.

laboratory studies of aversive racism, for example, have found that, in certain circumstances, individuals respond differently to people based in part on race,⁸¹ but do not perceive themselves to be doing so.⁸² Indeed, the widespread condemnation of racial animus in American society provides a powerful incentive for people to interpret their own views and behaviors in a manner that allows the maintenance of a non-prejudiced self-image. In the aversive racism studies, for example, individuals' assertions that they have not responded based on race when in fact they have represents not dishonesty but the limits of honesty.

Similarly, the manipulation of race and its imagery has shaped politics and voter preferences in ways that most voters would find difficult to believe.⁸³ Attitudes toward specific governmental policies, for example, are frequently tied to attitudes toward the people associated with a given policy. Though few people would recognize that their own reactions to social policies are altered by their image of the beneficiary group, political strategists regularly take account of the link between attitudes toward a specific policy and attitudes toward people thought to benefit from the policy. The recent attack on affirmative action in California, for example, portrayed affirmative action beneficiaries overwhelmingly as black although most affirmative action beneficiaries are white women. Opponents of affirmative action recognized that their assault on the policy stood the greatest chance of success if they could portray it as primarily benefitting black Americans.

The irony, then, of the social change of the past half century is that while racial attitudes reveal Americans to be genuinely less opposed to racial equality, race-based attitudes may nonetheless impede further change. Only now, such attitudes are more difficult to detect.⁸⁴

B. Dialogue, Attitudes, and Behavior

If we put aside questions about the ability to ascertain one's

81. See John F. Dovidio & Samuel L. Gaertner, *On the Nature of Contemporary Prejudice: The Causes, Consequences, and Challenges of Aversive Racism*, in RACISM: THE PROBLEM AND THE RESPONSE (Jennifer L. Eberhardt & Susan T. Fiske eds., 1997).

82. See Gaertner & Dovidio, *Aversive Form*, *supra* note 80.

83. See THOMAS B. EDSALL & MARY D. EDSALL, *CHAIN REACTION: THE IMPACT OF RACE, RIGHTS AND TAXES ON AMERICAN POLITICS* (1992) (noting how Republican party coupled Democratic party and political issues with racial images to woo voters into voting Republican).

84. See Reva B. Siegel, *The Rule of Love: Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2174-95 (1996) (describing ways in which changes in justificatory rhetoric may render status inequality more resistant to challenge).

motives and biases in connection with race, the dialogue as transformation approach relies on the links between dialogue and personal attitudes, and between personal attitudes and behavior.

The extent to which interracial communication can change one's racial views, although often taken for granted, is unclear.⁸⁵ Social psychologists have found that among whites *intraracial* communication about racial issues can lead to attitudinal changes. Whether a similar result would obtain with black-white communication is uncertain, and there is a substantial basis for believing that it would not. The phenomenon of in-group favoritism is well established.⁸⁶ Whites, for example, may lend more credence to the views of other whites than to those of blacks. In-group favoritism would likely be more extreme with respect to dialogue about racial as opposed to nonracial issues, because the racially oriented nature of the subject matter would make the participants' racial group membership more salient.⁸⁷ Thus, the setting in which racial attitudes are most amenable to change (*intraracial* dialogue) may also be the setting where those attitudes are least likely to be challenged and most likely to be reinforced.

The connection between views and behavior is also uncertain. While common knowledge dictates that changed views can change behavior, the theory of cognitive dissonance suggests that the causal link may work in reverse: Beliefs may change to correspond with behavior.⁸⁸ This phenomenon may be as applicable to societies as individuals. To take a historical example, the transformation of racial attitudes during the civil rights movement may have been the effect rather than the cause of social and legal change. The transformation of American society stemmed more from Cold War pressures and from America's having fought a war against the racism of Nazi Germany. Opposing racism abroad intensified demands to oppose it at home as well.⁸⁹ Television de-regionalized the South (where the most dramatic racial conflicts occurred) and focused worldwide attention on the blatant mistreatment of black Americans in a country ostensibly dedicated to equality. The turning of water hoses on peaceful protes-

85. See Margo J. Monteith et al., *Prejudice and Prejudice Reduction: Classical Challenges, Contemporary Approaches*, in *SOCIAL COGNITION: IMPACT ON SOCIAL PSYCHOLOGY* (Patricia G. Devine et al. eds., 1994).

86. In-group favoritism operates both with groups that exist in the society and with groups that are created in a research setting. See, e.g., Henri Tajfel & John C. Turner, *The Social Identity Theory of Intergroup Behavior*, in *PSYCHOLOGY OF INTERGROUP RELATIONS* (Stephen Worchel & William G. Austin eds., 1986).

87. See *id.*

88. See, e.g., LEON FESTINGER, *A THEORY OF COGNITIVE DISSONANCE* (1957).

89. See, e.g., Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 *STAN. L. REV.* 61 (1988) (describing how pressures of Cold War prompted America's embrace of principle of racial desegregation, as exemplified in *Brown v. Board of Education*, 347 U.S. 483 (1954)).

ters assumed heightened international significance in light of America's recent triumph over proponents of racial genocide. If the dramatic changes in American race relations resulted in part from the desire to be well regarded throughout the world,⁹⁰ American society's legal and social transformation was propelled more by foreign than domestic attitudes. American attitudes about racial equality may have evolved along with and reinforced changes in American society. And the Nazi example of the evil of racial thinking no doubt shaped American as well as foreign attitudes. But changes in American attitudes were not the sole or even a central factor in the racial transformation of American society. In sum, whether interracial dialogue about racial issues will change attitudes and, in turn, behavior is a complicated matter—one that cannot be taken for granted.

C. Private vs. Public

Dalton ably draws examples of the difficulties of dialogue from both the private and public spheres. This implicitly raises the question of the relationship between the spheres. Any analysis of the form and function of dialogue must rely on assumptions about both public and private debate.

One might view public discourse as merely the aggregation of interpersonal exchanges, both governed by the same processes and constraints. Large-scale attitudinal changes, and, for the sake of argument, the resulting behavioral and policy changes, result from the accumulation of changes among individuals who have been engaged in interracial dialogue. Individual discussion neatly translates into social transformation. Indeed, this seems to be Dalton's view. Toward the end of the book, he discusses the interracial gospel choir in which he sings and uses it as a model of the process of interracial communication and racial healing. The choir truly seems admirable. Whites who join it have chosen to immerse themselves in the cultural experience of black gospel music. Yet, by focusing on the choir, Dalton bypasses the fact that limits the efficacy of dialogue as transformation: Black Americans are a numerical minority. The admirable integration evidenced in his gospel choir could not be replicated throughout America.⁹¹

Despite its intuitive appeal, the model of public debate as the aggregation of interpersonal debate neither accurately captures the

90. See Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

91. Interestingly, even in this single gospel choir, integration was difficult to maintain, as the group resorted to special outreach for black members in order to maintain racial balance.

characteristics of public debate, nor creates a likelihood of altering the views of a significant number of whites. Because black Americans are a numerical minority in the United States,⁹² the possibility that individual blacks in dialogue with individual whites will change the views of a substantial number of white Americans is remote.⁹³ Even if every black American had an ongoing dialogue about racial issues with at least one white person, the overwhelming majority of white Americans would nonetheless remain excluded from interpersonal, interracial exchange. In fact, such a projection probably overstates the possibility of interracial dialogue. Residential segregation⁹⁴ and the unequal distribution of black and white Americans across employment categories⁹⁵ severely diminish the possibility of meaningful interracial dialogue through interpersonal relationships.⁹⁶ Given these limitations, even if individual attitudinal changes resulted from dialogue, their *social impact* would be questionable.

Moreover, an emphasis on raising racial consciousness through interpersonal, interracial communication establishes those middle-class blacks who work and live in largely white settings as the primary channels through which interracial dialogue would occur. This introduces the possibility that racial debate and its outcomes would be skewed as a result of the particular interests, biases and experiences of the black people who communicate with whites about racial issues.⁹⁷ The concerns of the black middle class cannot be presumed to reflect the needs and interests of black Americans more generally. Inasmuch as the problems of race are intertwined with problems of class, racial debate molded solely by the black middle class may contribute to a dialogue that neglects those social problems that are the most intractable precisely because they combine issues of race and class. Indeed, the argument that debate about race already reflects the

92. Aside from their percentage of the population, blacks are also a minority in terms of social, economic, and political power.

93. What will more likely change, based strictly on the numbers, are the views of those blacks who most frequently discuss racial issues with whites.

94. See, e.g., DOUGLAS MASSEY & NANCY DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993) (describing residential housing patterns of all socioeconomic groupings of black Americans and hyper-segregation of black underclass).

95. See, e.g., *A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY* (Gerald D. Jaynes & Robin M. Williams, Jr. eds., 1989); ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE AND UNEQUAL* 107-33 (1992).

96. Paradoxically, were America more occupationally and residentially integrated, interracial relationships would be much more common, but then the need for racial change probably would not be as pressing either.

97. For example, the discussion might become focused on issues that are more germane to middle class, professional blacks and relegate to a subordinate position (or perhaps ignore altogether) those issues affecting blacks who neither live nor work in white surroundings.

class-biased interests of middle-class blacks illustrates the problem of class bias.⁹⁸ Ultimately, interracial discussion of racial issues through interpersonal conversation by itself offers little prospect for either improvement in race relations or diminution of racial inequality.

A more plausible account of public discourse is that it differs from private, interpersonal communication not simply in scale, but also in its dynamics and the channels through which it occurs. While people may avoid race privately, blacks and whites alike volubly discuss it publicly.⁹⁹ In fact, race is a central concern of many of the nation's most prominent black scholars and intellectuals.¹⁰⁰ If public racial debate is something other than the aggregation of private dialogue, then what is it?

IV. A MODEL OF PUBLIC RACIAL DEBATE

Public racial debate occurs through the channels provided by the media and publishing industries, and the perceived public response to specific views partly determines which views are aired. The participation of black Americans in public racial debate is shaped by A) racial group power disparities, B) the legitimating power of blackness, and C) underlying beliefs about black Americans.

A. Power Disparities

Even laudable examples of black inclusion in public debate occur within the context of and are molded by the racial power disparities dialogue is thought to help alter.¹⁰¹ The extent to which individuals and groups are able to participate in public debate hinges in part on the media. "Access to the mass media is crucial" for anyone who desires to participate in public debate.¹⁰² Speech is not free to the

98. Affirmative action, some contend, is the most obvious fruit of efforts to promote the interests of the black middle class but not those of the black poor.

99. Examples of the public discussion of race are far too numerous to cite. Affirmative action, for example, has received an incredible amount of media, political, and judicial attention. Some of the most popular non-fiction books of the past several years have had to do with race. See, e.g., DINESH D'SOUZA, *THE END OF RACISM* (1995); HACKER, *supra* note 95; RICHARD HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE* (1994); CORNEL WEST, *RACE MATTERS* (1993); see also *infra* text accompanying notes 129-59.

100. See, e.g., MICHAEL E. DYSON, *RACE RULES* (1996); HENRY LOUIS GATES & CORNEL WEST, *THE FUTURE OF THE RACE* (1996); Robert S. Boynton, *The New Intellectuals: African American Intellectuals*, ATLANTIC MONTHLY, Mar. 1995, at 53.

101. The most thought-provoking analysis of the role of black intellectuals in public debate remains HAROLD CRUSE, *THE CRISIS OF THE NEGRO INTELLECTUAL* (1967). See also Minow, *supra* note 47, at 73 (observing that "the more powerful we are . . . [the more] we are able to put and hear questions in ways that do not question ourselves"). For an interesting response to black Americans' limited influence over public debate and public policy, see Paul Butler, *Black Power in the Jury Box: The Case for Racially Based Jury Nullification*, 105 YALE L.J. 677 (1995).

102. Ingber, *supra* note 40, at 38.

extent that one must rely on others to provide a forum for it.¹⁰³ Although the First Amendment's free speech guarantee generally requires government neutrality as to different viewpoints and different speakers,¹⁰⁴ there is no parallel requirement of neutrality for private media institutions. The fact that the government cannot "forbid the expression of a particular idea"¹⁰⁵ does little to promote those ideas that do not find favor with the class of people that controls the media and thus determines whose idea will be heard.¹⁰⁶ As one commentator notes, "Media owners and managers, rather than the individuals wishing to speak, thus determine which persons, facts, and ideas shall reach the public."¹⁰⁷

The difficulty of gaining access to public debate would be less worrisome were it not for racial group power disparities. Power may be less salient in interpersonal exchanges, where interracial discussions frequently occur among social and professional peers. But in the public arena, race cannot be divorced from power. It may be that "differences in . . . power and perspective at the very least make it unlikely that politics will ever tend toward undominated dialogue."¹⁰⁸ Relative to white Americans, black Americans have little control over the media through which one gains access to public debate.¹⁰⁹ In the words of one scholar, "The expense of speech precludes [black Americans as a group] from participating effectively in the marketplace of ideas."¹¹⁰ Another comments, "If access to the means of speech is effectively socially precluded on the basis of race or class or gender, freedom from state burdens on speech does not meaningfully guarantee the freedom to speak."¹¹¹ Thus, the norm of unfettered discourse is never truly realized and "the speech of the powerful impresses its view upon the world, concealing the truth of powerlessness [among other groups, blacks in particular]."¹¹²

103. See *id.* A similar sentiment is expressed by the saying, "Freedom of the press belongs to those who own one."

104. See, e.g., *Hustler Magazine v. Falwell*, 485 U.S. 46, 56 (1988).

105. Post, *supra* note 41, at 132.

106. Of course, the media's promotion of some ideas but not others is based largely on the perception of those in the media of what the public wants. Nonetheless, the media shapes public appetites as much as it responds to them.

107. Ingber, *supra* note 40, at 38-39.

108. Kathleen M. Sullivan, *Rainbow Republicanism*, 97 YALE L.J. 1713, 1718 (1988).

109. Although advances in technology may redistribute the ability to enter public debate, at this point the overwhelming portion of public dialogue that can impact the policies and practices of public and private institutions with respect to race occurs in the traditional print outlets of newspapers, magazines, and journals, as well as in the handful of broadcast outlets that together mold the opinions of the majority of the nation's population.

110. Delgado & Stefancic, *supra* note 37, at 1287.

111. MACKINNON, *supra* note 52, at 208.

112. *Id.* at 155 (describing about gender what is also true of race).

As a result of racial power disparities, black Americans, as a group, have little control over the purposes toward which the views of individual blacks are turned.¹¹³ Blacks are unable to channel racial debate, even when their own views are a focus of the debate. While there is always the possibility, regardless of one's race, that one's views may be later distorted in support of goals of which one does not approve,¹¹⁴ that possibility is heightened with black speakers on racial issues due to the legitimating power of blackness and blacks' lack of influence over the media that help to shape public policy and opinion.

A prime illustration of black inability to channel debate involves the book *The Declining Significance of Race: Blacks and Changing American Institutions*, published in 1978 by William Julius Wilson, one of America's most widely respected sociologists. He published the book to highlight the worsening economic circumstances and increasing marginality of the poorest black Americans, those who lack the education and skills to move into the professional jobs made available by the civil rights movement.¹¹⁵ The book develops two related arguments. First, racial factors play less of a role than during earlier eras in constraining the opportunities of black Americans. Second, economic and demographic forces¹¹⁶ have diminished the opportunities and life chances of lower-class blacks so that their lives and communities have become more marginal, isolated, and economically stricken than a generation earlier. As a social democrat, Wilson intended the book to provide empirical and theoretical support for an expansion of social programs.

113. This is a theme of Derrick Bell's most recent book. See DERRICK BELL, *GOSPEL CHOIRS* (1996). In the book, the central character, a black law professor modeled on Bell, publishes a satirical article suggesting that all equal employment laws be repealed and that blacks be removed from jobs to make room for "more qualified" whites. The article contains a draft of the legislation necessary to accomplish that purpose. To the horror of the author, conservative politicians seize on the mock legislation as the model for actual legislation.

114. The fabled "Moynihan report" is the classic example of this. Despite the fact that it was meant to make the case for social programs targeted at black Americans, it came to be seen as an indictment of the black family. For an excellent analysis of how Moynihan's views and goals were twisted once the report entered the public domain, see DARYL M. SCOTT, *CONTEMPT AND PITY: EXPERTS, SOCIAL POLICY, AND THE IMAGE OF THE BLACK PSYCHE, 1880-1995* (1997).

115. Specifically, Wilson sought to explain the divergence in fortunes of different sectors of the black community. The title of the book refers to the fact that middle-class blacks as a result of the civil rights movement no longer face the racial roadblocks that impeded their occupational, educational, and economic progress prior to the 1960s.

116. Specifically, Wilson argues that deindustrialization and the movement of jobs to suburban areas created a spatial mismatch in which those blacks most in need of non-professional jobs were geographically unable to reach them. The isolation of poor blacks in inner-city areas was intensified by the movement away from central cities of middle-class blacks, who in generations past had provided a social buffer that helped black communities endure economic hardship.

The ensuing debate focused nearly exclusively on whether race was declining in importance. If, as Wilson argued, race had declined in importance, some political activists and politicians might use that fact to justify opposition to social programs aimed at reducing racial inequality. Ultimately, Wilson's argument was co-opted by those who seized its analysis of the declining significance of race and the expansion of opportunities for middle-class blacks and ignored Wilson's description of the plight of lower-class blacks.¹¹⁷ The arguments of a politically liberal black were thus manipulated to support policies he opposed.¹¹⁸

B. The Legitimizing Power of Blackness

Although political conservatives certainly would have embraced Wilson's argument had he been white,¹¹⁹ his blackness offered an additional benefit: It helped to create the impression that efforts to dismantle race-based social programs are not racially biased. Blacks' ostensibly meaningful role in decision-making processes partially immunizes the resulting policies against charges that they are anti-black.

No matter their personal intent or preferences, individual blacks enter public debate as representatives of their race.¹²⁰ Views expressed by blacks are often used to legitimate views more commonly held by whites.¹²¹ Although it is frequently true, as Dalton notes,

117. For an elaboration of this point see David B. Wilkins, *Race, Ethics and the First Amendment: Should a Black Lawyer Represent the Ku Klux Klan?*, 63 GEO. WASH. L. REV. 1030, 1036 (1995).

118. In his next book, Wilson focused solely on the worsening condition of the black underclass. WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987). In the preface, *id.* at vii-xi, Wilson states explicitly that he decided to write *The Truly Disadvantaged* because this aspect of *The Declining Significance of Race* had been virtually ignored and because of his displeasure with the ways in which his ideas had been manipulated by political conservatives.

119. The best example of a white social scientist championed by political conservatives is Charles Murray, who wrote *CHARLES MURRAY, LOSING GROUND: AMERICAN SOCIAL POLICY FROM 1950 TO 1980* (1984), which argued that social programs worsened rather than alleviated social ills.

120. See, e.g., CARTER, *supra* note 5 (arguing that blacks often assume role of racial representatives but should not do so); DUNCAN KENNEDY, *SEXY DRESSING: ESSAYS ON THE POLITICS AND POWER OF CULTURAL IDENTITY* (1993) (expressing belief that interpretation and understanding of speaker's views are unavoidably shaped by knowledge of speaker's identity, perhaps causing listeners to read into or attach to speaker's views inferences and conclusions that speaker did not consciously intend); Wilkins, *supra* note 117, at 1041 (using Cornel West's phrase that "race matters" when blacks enter public debate).

121. Catherine MacKinnon's remark about women and men may also apply to blacks and whites. As such, most blacks in power would be accountable to whites in power, because those in power are usually white. See MACKINNON, *supra* note 52, at 220. Jerome McCristal Culp takes this line of thinking a step further describing a federal judge as believing "that black

that blacks' views are discounted, black Americans in some cases are accorded a heightened degree of race-based authority.¹²² Views vulnerable to accusations of racism when expressed by a white become badges of bravery and individuality when expressed by a black.¹²³ Curiously, many white commentators who laud the moral ideal of colorblindness¹²⁴ are not hesitant to note that their view of a particular racial issue has been endorsed by this *black* economist or that *black* writer.¹²⁵ Why would someone who advocates colorblindness ever mention the race of those who share his opinion?

Nominal black participation in debate implies that public discourse is neither racially exclusive nor racially biased. Their participation implies group inclusion and cleanses the debate of any taint of racial bias, as though blacks could both negate the anti-black sentiment of others and are immune to it themselves.

C. Beliefs About Black Americans

Dialogue is also shaped by values and assumptions that participants share in common.¹²⁶ What is heard is only that which finds its words among the vocabularies of prevailing conversations.¹²⁷ Those views that diverge too sharply from the underlying consensus or that challenge assumptions otherwise taken for granted may not be heard at all. Racial debate is thus channelled by prevailing, though rarely explicitly stated, beliefs about black Americans. The extent to which individuals, both black and white, gain entry into public debate depends *in part* on the extent to which they accept, or at least fail to challenge, prevailing views about blacks and the underlying as-

people cannot speak and defend themselves in a distinctive way. [Black] voices are important only when they echo what white scholars have said or will say." Jerome McCristal Culp, *Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy*, 41 DUKE L.J. 1095, 1107 (1992).

122. See Wilkins, *supra* note 117, at 1040-43.

123. See CARTER, *supra* note 5, at 125-91 (priding himself on his courage in breaking with black orthodoxy and expressing ideas, attitudes, and beliefs that are widely shared in American society); see also Wilkins, *supra* note 117, at 1066 (noting that blacks can gain acclaim by "criticizing what is perceived to be the prevailing orthodoxy among black leaders").

124. On colorblindness as a moral ideal, see R. Richard Banks, "Nondiscriminatory" *Perpetuation of Racial Subordination*, 76 B.U. L. REV. 669 (1997).

125. See CLINT BOLICK, *THE AFFIRMATIVE ACTION FRAUD* (1996) (assailing color consciousness yet repeatedly noting race of black scholars who share his views); STEVEN YATES, *CIVIL WRONGS* at xxvii (1994) (professing importance of colorblindness, yet continually mentioning that "a growing number of black intellectuals" share many of his views).

126. See, e.g., Kenneth L. Karst, *Boundaries and Reasons: Freedom of Expression and the Subordination of Groups*, 1990 U. ILL. L. REV. 1, 95, 97 (noting that deliberative communication occurs within context of shared major values).

127. See DANIEL BELL, *THE CULTURAL CONTRADICTIONS OF CAPITALISM* at xi (paperback ed. 1978).

sumptions that frame racial debate. When those beliefs and assumptions posit black inferiority or justify racial inequality, black participation serves to legitimate the very state of affairs that the involvement of blacks suggests has been transformed. From this perspective, interracial dialogue about race, rather than leading to new understandings, heightened sensitivities, and more nuanced insights, might perpetuate existing power disparities and entrench racial subordination. Conditions of substantive inequality might then become even more resistant to change for having been legitimated by the process of discourse.¹²⁸

One example of the ways in which public debate legitimizes anti-black sentiment is the controversy surrounding the best-selling 1994 book *The Bell Curve: Intelligence and Class Structure in American Life*,¹²⁹ by the late Richard Herrnstein¹³⁰ and Charles Murray. *The Bell Curve* generated controversy due to its assertion, "demonstrated" through empirical data, that black Americans are genetically inferior to white Americans.¹³¹ Although social scientists a generation earlier had heralded the demise of scientific racism,¹³² and although explicit claims of racial inferiority are met with opprobrium, *The Bell Curve* was published by a mainstream publisher,¹³³ heavily promoted, and widely reviewed. Charles Murray attained celebrity status, with appearances on numerous nationally televised programs, endless

128. Alan Freeman makes a similar argument with respect to anti-discrimination law. See Alan Freeman, *Legitimizing Racial Discrimination through Anti-discrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978).

129. See HERRNSTEIN & MURRAY, *supra* note 99.

130. With *The Bell Curve*, Herrnstein traveled familiar territory. See RICHARD HERRNSTEIN, *I.Q. IN THE MERITOCRACY* (1973).

131. The several-hundred-page book, of course, considered much more than the relative intelligence of blacks and whites. (Yet it was this feature that accounted for both the book's popularity and the controversy it generated.) Eleven of the book's 22 chapters are explicitly about race. See, e.g., *THE BELL CURVE DEBATE* (Russell Jacoby & Naomi Glauberman eds., 1995); *THE BELL CURVE WARS* (Steven Fraser ed., 1995).

132. "One of the most important changes that laid the cultural groundwork for the civil rights struggle of the 1950s and 1960s was the discrediting of theories of biological racism. . . . Not only did academe turn against notions of biological racism, but much of the propaganda in the United States during World War II portrayed racism as inherently antidemocratic." Lawrence Bobo, *Group Conflict, Prejudice, and the Paradox of Contemporary Racial Attitudes*, in *ELIMINATING RACISM* 94 (Phyllis A. Katz & Dalmás A. Taylor eds., 1988); see also ALLAN CHASE, *THE LEGACY OF MALTHUS* 68 (1977) ("Because of the close ideological and collaborative links between the American eugenics movement and the leaders of Nazi Germany . . . most American scientists believed that scientific racism had become one of the unnumbered casualties of World War II.").

133. The publisher was Basic Books.

newspaper and magazine interviews, and no shortage of supporters eager to proclaim his nonracist disposition.¹³⁴

The book's assertion of black inferiority was taken seriously, even by many well-known pundits and leading scholars.¹³⁵ The *New York Times*, generally regarded as the most widely respected and reputable newspaper in America, published three separate articles about *The Bell Curve*, two of which reviewed the book. The first *New York Times* reviewer also considered books by J. Philippe Rushton¹³⁶ and Seymour W. Itzkoff.¹³⁷ Rushton asserts that there are genetic differences between blacks and whites that explain a wide range of social phenomena, from criminality to physical health.¹³⁸ Rushton claims that compared to whites, blacks have smaller brains (which makes them less intelligent) and more active sexual drives, and are predisposed to have more children but nurture them less.¹³⁹ Itzkoff argues that American economic competitiveness is undermined by excessive procreation among the least intelligent and declining procreation among the most intelligent.¹⁴⁰ Along with Rushton, Itzkoff attributes great explanatory power to supposed genetic differences between groups of people. He ascribes the "underclass" problem, for example, entirely to genetics¹⁴¹ and traces the current disadvantage of black Americans more generally to "the tragic heritage of intellectual incapacity."¹⁴² Recognizing that one might take issue with such claims, the reviewer urged that "the possibility that the authors may be even partly right makes these three books worth plowing through and mulling over."¹⁴³ The other *New York*

134. Conservative pundit William F. Buckley, for example, has referred to Murray as a "quiet, conscientious, scholarly social scientist." William F. Buckley, *The Far Reaches of Illegitimate Behavior*, WASH. TIMES, Aug. 25, 1996, at 33.

135. See, e.g., Daryl M. Scott, *Cognitive Conceit: A Review of The Bell Curve*, SOCIAL POLICY, Winter 1994, at 50 (describing reluctance of both conservative and liberal reviewers to classify *The Bell Curve* as racist).

136. J. PHILIPPE RUSHTON, *RACE, EVOLUTION, AND BEHAVIOR: A LIFE HISTORY PERSPECTIVE* (1994).

137. SEYMOUR W. ITZKOFF, *THE DECLINE OF INTELLIGENCE IN AMERICA: A STRATEGY FOR NATIONAL RENEWAL* (1994).

138. Rushton also examines Asians, whom he consistently finds to be superior to both whites and blacks. Thus, he would argue, his theory could not be predicated on notions of white superiority or white supremacy because he has found whites generally to fall in between Asians and blacks.

139. For Rushton's own summary of his views, see RUSHTON, *supra* note 136, at 259-75.

140. See ITZKOFF, *supra* note 137, at 74-78.

141. See *id.* at 111-12.

142. *Id.* at 147.

143. Malcolm W. Browne, *What Is Intelligence, and Who Has It?*, N.Y. TIMES, Oct. 16, 1994, § 7 (Book Review), at 3.

Times reviewer decided to “leave the argument [about black genetic intellectual inferiority] to experts.”¹⁴⁴

Pundits and scholars echoed the *New York Times*’s tone of calm reserve and reasoned impartiality. Well-known syndicated columnist Robert Samuelson, reviewing *The Bell Curve* in the *Washington Post*, observed that the “mere suggestion of racial inferiority has, unfortunately but inevitably, dominated debate about the book.”¹⁴⁵ Remaining undecided on the issue of racial inferiority, Samuelson declined to choose sides, though he did assure the reader that “Charles Murray is no bigot.”¹⁴⁶ Stephen Jay Gould was one of the few intellectuals whose refutation of the book expressed no reservations or ambivalence.¹⁴⁷

Some reviewers who did not accept the book’s conclusions about race and intelligence focused instead on the importance of open discussion and rebuked the book’s critics for what they interpreted as a narrow-minded attempt to stifle public debate about important issues.¹⁴⁸ The initial *New York Times* reviewer, referring to the Rushton and Itzkoff books along with *The Bell Curve*, cautioned that “[t]he government or society that persists in sweeping their subject matter under the rug will do so at its own peril.”¹⁴⁹

144. Peter Passell, *It's a Grim Message: Dummies Fail More Often*, N.Y. TIMES, Oct. 27, 1994, at C19.

145. Robert J. Samuelson, “*Bell Curve*” *Ballistics*, WASH. POST, Oct. 26, 1994, at A23.

146. *Id.*

147. See Stephen Jay Gould, *Curveball*, NEW YORKER, Nov. 28, 1994, at 139; see also STEPHEN JAY GOULD, *MISMEASURE OF MAN* (1996) (debunking generally type of “scientific inquiry” represented by *The Bell Curve*).

148. An interesting contrast is found in public reaction to *The Bell Curve* compared to the reaction to books that might be thought to disparage groups other than blacks. For example, in spring 1996, St. Martin’s Press halted its plans to publish a biography of the Nazi Joseph Goebbels because its subtext was that Jews brought the Holocaust upon themselves. The publisher’s decision was generally applauded and no other mainstream publisher offered to publish the book. See, e.g., Jerry Adler, *Just Following Orders*, NEWSWEEK, Apr. 15, 1996, at 74; Doreen Caraval, *Group Tries to Halt Selling of Racist Novel*, N.Y. TIMES, Apr. 20, 1996, at 6; Aryeh Neier, *Publishing and Perishing*, NATION, May 6, 1996, at 6-7.

149. Browne, *supra* note 143, at 3. The commentary about *The Bell Curve* was remarkably similar to the atmosphere, nearly a quarter century earlier, when Richard Herrnstein published an article detailing views on race and intelligence similar to those contained in *The Bell Curve*. Richard Herrnstein, *IQ*, ATLANTIC MONTHLY, Sept. 1971, at 43-64. The editors of *Atlantic Monthly* defended their decision to publish Herrnstein’s article because it is “necessary to have a public discussion of important, albeit painful, social issues. The subject of intelligence is such an issue—important because social legislation must come to terms with actual human potentialities, painful because the actualities are sometimes not what we vainly hope.” CHASE, *supra* note 132, at 488 (citing *Atlantic Monthly*).

Many leading black scholars declined to reject the implicit terms of the discussion.¹⁵⁰ Glenn Loury, for example, sympathized with *The Bell Curve*'s authors, saying that they "will surely get more grief than they deserve for having stated the facts of this matter: that on average blacks lag significantly behind whites in cognitive functioning."¹⁵¹ As to the validity of Murray and Herrnstein's claim of black intellectual inferiority, Loury remained uncommitted. "[A]ny assertion of equal black capacity," he wrote, "is a hypothesis, not a fact."¹⁵² He rejected the assertion of black inferiority for moral reasons, describing equality as "an ethical axiom, not contingent on psychological fact."¹⁵³ Reviewing *The Bell Curve* in the *American Spectator*,¹⁵⁴ Thomas Sowell did not accept the thrust of Murray and Herrnstein's argument, but he pointed out its inconsistencies and unsubstantiated inferences in a remarkably polite and respectful manner. Sowell reserved his venom for those who castigated Murray and Herrnstein, referring to such critics as "demagogues in the business of scavenging for grievances."¹⁵⁵ They were unwilling, Sowell said, to engage in open debate about important issues. One of the few black columnists at the *Washington Post* termed the book "a stink bomb" and described Charles Murray as "something of an intellectual daredevil."¹⁵⁶

Most commentators, black and white alike, accepted the terms of the debate established by Murray and Herrnstein. Some passionately rejected the book's conclusions. Others presented detailed analyses of Murray and Herrnstein's methodological flaws and invalid inferences. Unfortunately such a mode of response validates the notion of black inferiority and fails to lay bare its perniciousness. The inclusion of blacks in the debate creates the pretense that the interests of black

150. Two notable exceptions are Claude Steele, a psychology professor at Stanford University, and Daryl Michael Scott, a history professor at Columbia University. Professor Steele analogized the discussion sparked by *The Bell Curve* to the dialogue about Jews in the years preceding the Holocaust. See Claude Steele, *Bizarre Black I.Q. Claims Abetted by Media*, S.F. CHRON., Oct. 31, 1994, at A23. See also Scott, *supra* note 135 (explaining that traditional definition of racist refers to person who constructs hierarchies among racial groups and by this standard, concluding, that Murray and Herrnstein are racists).

151. GLENN C. LOURY, ONE BY ONE FROM THE INSIDE OUT: ESSAYS AND REVIEWS ON RACE AND RESPONSIBILITY IN AMERICA 306 (1995).

152. *Id.* at 308.

153. *Id.* at 309.

154. See Thomas Sowell, *Ethnicity and IQ*, AM. SPECTATOR, Feb. 1995, at 32.

155. *Id.* at 36.

156. William Raspberry, *Is IQ Really Everything?*, WASH. POST, Oct. 12, 1994, at A23.

Americans are represented,¹⁵⁷ and that, by implication, the process and substance of the debate are not tainted by racial bias.¹⁵⁸ Those black scholars who commented on *The Bell Curve* did not simply add one more view to the whirl of publicity the book generated; they signified, by the fact of their race, that the substance of the book is worth discussing on its merits and that neither the book nor the discussion concerning it are racist.

Critiquing the substance of *The Bell Curve* suggests that its claim of black inferiority is worthy of, and in need of, rebuttal. Thus, even those scholars who purportedly rejected Murray and Herrnstein's claim of black genetic inferiority lent the argument implicit credibility simply by engaging it. The tone and substance of the responses suggested that even if Murray and Herrnstein were not wholly correct, their assertion that racial differences in intelligence partly explain current patterns of racial inequality is at least plausible. By way of contrast, a scholar who claimed that Jews brought about the Holocaust would not be granted the respectability and the right to be heard that was accorded Charles Murray.¹⁵⁹

How might intellectuals have responded to *The Bell Curve* without implicitly legitimizing it and lending credence to its argument of black genetic inferiority? After all, as the best-selling work of scientific racism of all time, the book's impact on public consciousness would not dissipate as a result of its critics' scornful silence.

Commentators might have discussed the ways in which the astounding success of *The Bell Curve* reflected characteristic aspects of the national social climate and widely shared sentiments within American society. Such a response could have examined Murray and Herrnstein's assumptions about the genetic basis of race in light of the fact that the category of "race" as a scientific construct has been widely discredited. Why would so many scholars who on other occasions have embraced the concept of race as a social construction with no genetic basis suddenly lose sight of that accepted scientific

157. Presumably, there are many blacks, scholars, and others, who would dismiss the Herrnstein/Murray thesis about a link between intelligence and race as preposterous. Unfortunately, such people are not among those who are able (or are selected) to express their views through our nation's major magazines and newspapers.

158. This is analogous to the fact that in the employment context, the employer's promotion of some blacks could be successfully used to rebut a Title VII disparate impact claim by other blacks, even if those blacks are being held back for reasons that have to do with race. Barbara J. Flagg develops this argument in her article Barbara J. Flagg, *Fashioning a Title VII Remedy for Transparently White Subjective Decisionmaking*, 104 YALE L.J. 2009 (1995).

159. See *supra* note 148 (noting approval of publisher's decision not to publish anti-Semitic tract). In addition to wide coverage in the print media, Charles Murray became a near-celebrity through appearances on the *Today Show*, *Nightline*, and elsewhere. The respect generally accorded Charles Murray is truly astounding. See, e.g., Buckley, *supra* note 134, at 33.

fact? Alternatively, such a response might have connected *The Bell Curve* phenomenon to other developments within American society: the rise of militias, opposition to affirmative action, the anti-immigrant movement, and so forth. One might have used the controversy as a case study in the anatomy of anti-black sentiment, much as scholars have done with accusations that Jews brought on the Holocaust and with the recent rise of neo-Nazis in Germany. My point is a simple one: There are many ways to address *The Bell Curve* and the debate it engendered without unintentionally legitimizing the book.

Due to the legitimizing power of blackness, many black writers and intellectuals might be reluctant to express views that are particularly likely to be distorted in ways of which they do not approve. For example, many may decline to criticize other blacks or highlight differences within the black community. Ironically, such a stance creates the opening for harsher, less sympathetic criticism.¹⁶⁰ Shelby Steele's *The Content of Our Character*,¹⁶¹ for example, garnered such attention partly because it critiqued affirmative action, integration, and black under-performance in a way other blacks had been unwilling to do.¹⁶² Had black intellectuals more honestly considered the contradictions of affirmative action, black achievement, and integration, the hunger for a book such as Steele's *may* not have been so great.¹⁶³ A similar point can be made about the focus by political conservatives on social pathology within the black community during the 1980s.¹⁶⁴ Had black liberals taken it on themselves to explain black social dysfunction in terms of something other than the increasingly hollow and vague claim of racism, the opportunity for political conservatives to manipulate black social problems for their own ends might not have been so great.¹⁶⁵

160. Cf. Wilkins, *supra* note 117, at 1066 (arguing that potential distortion and misuse of one's view's do not warrant silence).

161. SHELBY STEELE, *THE CONTENT OF OUR CHARACTER: A NEW VISION OF RACE IN AMERICA* (1990).

162. The same can be said about Richard Rodriguez's book *Hunger for Memory*, which critiqued bilingual education and affirmative action. See RICHARD RODRIGUEZ, *HUNGER FOR MEMORY: THE EDUCATION OF RICHARD RODRIGUEZ* (1982).

163. This depends, of course, on the extent of anti-black sentiment in American society. The greater the market for scholarly and popular works that vilify or can be used to vilify black Americans, the less likely such hunger could be sated by more balanced analyses of black life.

164. The best example of conservative emphasis on black pathology is Charles Murray's *Losing Ground*. See *supra* note 119.

165. William Julius Wilson makes this observation in *The Truly Disadvantaged*, where he faults liberal analyses of racial inequality for "arguments [that] typify worn-out themes and make conservative writers more interesting in comparison because they seem, on the surface at least, to have some fresh ideas." WILSON, *supra* text accompanying note 115, at 12.

V. CONCLUSION

Public dialogue about racial issues may neither further participation in democratic self-government nor promote the discovery of truth to the extent that many would like to believe. Public dialogue about race may promote the illusion that public debate is free from racial bias and equally open to members of all groups. Because prevailing attitudes about black Americans may serve to limit speech that questions racial assumptions, public dialogue may not lead to truth. Rather, conversation may indirectly reinforce underlying assumptions about race and racial differences. Ideas that contradict the widely held assumptions that frame public debate may never be heard.¹⁶⁶

If public debate about race does not promote the remediation of racial inequality because the debate is skewed by the very racial power disparities it is thought to alter, then what is the point of all the talk? If dialogue is not transformation, then what is its purpose? Public racial debate may serve to memorialize the attitudes and assumptions of the present era so that future generations may gain insight into their own time through an analysis of ours. In this way, mistakes of the present, which will only appear so with the acuity of hindsight, perhaps are less likely to be repeated.

Although racial dialogue may not by itself lead to change, dialogue may steer change precipitated by other influences in one direction rather than another. Any given confluence of social, political, and economic conditions may be susceptible to numerous paths of change.¹⁶⁷

Pundits and scholars would do well to focus on the content of public debate and to illuminate the ways in which public debate about race is skewed by the very racial inequalities such dialogue is intended to alter. Paradoxically, it is only through attention to the distortions of dialogue that we can hope eventually to realize its potential.

166. See SAMUEL BOWLES & HERBERT GINTIS, *SCHOOLING IN CAPITALIST AMERICA* 116 (1976) (quoting Louis Wirth's statement that "elemental and important facts . . . that are seldom debated and generally regarded as settled" are at core of many controversies).

167. This is true of legal doctrine as well as racial conditions. See Robert W. Gordon, *Critical Legal Histories*, 36 *STAN. L. REV.* 57 (1984).